Ahmad Ramzi bin Mohamad Zubir v Hj Abdul Hadi bin Awang & Ors

HIGH COURT (KUALA TERENGGANU) — ELECTION PETITION NOS 04 OF 2008 AND 05 OF 2008
KANG HWEE GEE J
8 OCTOBER 2008

Election — Petition — Allegation of corrupt and illegal practices — Bribery, treating or intimidation — Whether corrupt practice committed in connection with election — Whether committed by candidate or with his knowledge or by his agent — Election Petition Rules 1954 r 4(1)

Election — Petition — Presentation of — Whether material facts to show cause to complain under one of five provisions of s 32 of the Election Offences Act 1954 must be pleaded — Whether petition could be supplemented by affidavit — Whether petition to be struck out if material facts not pleaded

Two election petitions were filed in relation to the parliamentary constituency of Marang P37 and the state constituency of Ru Rendang N19 respectively. Both were against the same winning candidate, the first respondent. The first respondent was declared the duly elected member of the P37 and N19 seats. Both the petitioners claimed the right to present this petition under s 34 of the Election Offences 1954 ('the Act') as a person who had the right to be returned or elected at the election. The petitioners claimed that the first respondent or his agents had threatened and harassed voters. The first respondent raised a preliminary objection citing s 32(c) of the Act which requires that corrupt or illegal practice must have been committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate. It was submitted that the petitioners had failed to state the particulars and material facts as required by r 4(1)(b) of the Election Petition Rules 1954 ('the Rules') and that the petitioners had failed to particularise the persons or the agents of the respondent whom they alleged to have committed the acts complained of. The first respondent also cited s 32(a) of the Act which requires the element that general treating or general intimidation had so extensively prevailed that they may be reasonably supposed to have affected the result of the election. It was claimed that no such particulars were provided to show how all these incidents were related to the respondent and generally how they affected the result of the election.

Held, allowing the preliminary objections with costs:

(1) A petitioner is obliged to plead in the petition itself such material facts with such particulars where necessary to show on the face of the petition that he has a cause to complain under one of the five provisions of s 32 of the Act before his petition can be examined on the merit at a full hearing. The petitioner cannot supplement his petition later by affidavit or otherwise for the court will not travel outside the petition in order to decide whether he has a cause of action. A failure on the part of the petitioner to state in the petition itself such facts as to disclose a cause of action on his complaint is therefore liable to have his petition struck out (see paras 15–17).

(2) To sustain the petition on the complaint under s 32(c) the court was bound to examine whether on the face of that petition there was in existence such 'facts and grounds' to show: (i) that the corrupt practice was committed in connection with the election; (ii) that it was committed by the candidate or with his knowledge or consent or by any agent of the candidate (see para 22).

(3) The petitioners had pleaded sufficient particulars and grounds that the corrupt or illegal practice had been committed but failed to provide sufficient particulars to indicate that the act was committed by the candidate or with his knowledge or consent or by any agent of the candidate. The fact that the act was committed by a person called Mohamad Khalil and his supporters all wearing PAS jacket was insufficient to indicate that the act was committed with his knowledge, consent or by his agent. The fact that the said Mohamad Khalil was the son of the first respondent did not make any difference since an individual is not responsible for the act of another, their biological relationship notwithstanding (see para 23).

(4) The petitions had also failed to provide sufficient facts and grounds pursuant to r 4(1) of the Rules in so far as a nexus was required to fasten culpability on the first respondent (see para 25).

(5) The petitioners did not state specifically how such general bribery, treating or intimidation if any had affected the results of the election and thereby leaving the issue empirical. Under the circumstances it was permissible for the court to find that the events described could not have 'extensively prevailed' at both the P37 and N19 constituencies given that 86.89% and 86.23% of the total registered voters respectively had turned out to vote. The same finding followed in respect of the ground based on cumulative effects of all the incidents leading to general intimidation, etc under s 32(a) (see paras 27–28).

[Bahasa Malaysia summary

Dua petisyen pilihan raya telah difailkan masing-masing berkaitan dengan kawasan pilihan raya Parlimen Marang P37 dan kawasan negeri Ru Rendang N19. Kedua-duanya adalah terhadap calon menang yang sama, responden pertama. Responden pertama telah diisytiharkan sebagai ahli yang akan dipilih untuk kerusi-kerusi P37 dan N19. Kedua-dua pempetisyen menuntut hak untuk mengemukakan petisyen ini di bawah s 34 Akta Kesalahan-Kesalahan Pilihan Raya 1954 ('Akta') sebagai seseorang yang mempunyai hak untuk dilapor dipilih atau dipilih dalam pilihan raya tersebut. Pempetisyen-pempetisyen mendakwa bahawa responden pertama atau ejen-ejennya telah mengugut dan mengganggu pengundi-pengundi. Responden pertama telah menimbulkan bantahan awal dengan menyatakan s 32(c) Akta yang menghendaki amalan rasuah atau menyalahi undang-undang sepatutnya telah dilakukan berkaitan dengan pilihan raya oleh calon atau dengan pengetahuan atau persetujuannya, atau oleh mana-mana ejen calon. Adalah dihujahkan bahawa pempetisyen-pempetisyen telah gagal untuk menyatakan butir-butir dan fakta-fakta penting sepertimana yang dikehendaki oleh k 4(1)(b) Kaedah-Kaedah Petisyen Pilihan Raya ('Kaedah-Kaedah') dan bahawa pempetisyen-pempetisyen telah gagal untuk memperincikan individu-individu atau ejen-ejen responden yang mereka katakan telah melakukan tindakan-tindakan yang telah diadukan. Responden pertama juga menyatakan s 32(a) Akta yang menghendaki elemen bahawa penjamuan am ataupun ugutan am telah berlaku sebegitu berleluasa sehingga ia boleh dianggap menjejaskan keputusan pilihan raya tersebut. Ia didakwa bahawa tiada butir-butir sedemikian yang telah dikemukakan untuk menunjukkan bagaimana semua kejadian berikut berkaitan dengan responden dan pada amnya bagaimana ia menjejaskan keputusan pilihan raya.

Diputuskan, membenarkan bantahan awal dengan kos:

(1) Pempetisyen diwajibkan memplidkan dalam petisyennya sendiri fakta-fakta penting dengan butir-butir yang perlu untuk menunjukkan pada petisyen itu bahawa dia mempunyai kausa untuk mengadu di bawah salah satu daripada lima peruntukan s 32 Akta sebelum petisyennya boleh diperiksa atas merit di perbicaraan penuh. Pempetisyen tidak boleh menambah petisyennya kemudian dengan afidavit atau sebaliknya kerana mahkamah tidak akan melihat selain petisyen itu untuk memutuskan sama ada dia mempunyai kausa tindakan. Kegagalan di pihak pempetisyen untuk menyatakan dalam petisyennya sendiri tentang fakta-fakta sedemikian bagi menzahirkan

kausa tindakan atas aduannya oleh itu boleh menyebabkan petisyennya dibatalkan (lihat perenggan 15–17).

(2) Untuk mengekalkan petisyen atas aduan di bawah s 32(c) mahkamah terikat untuk memeriksa sama ada pada petisyen tersebut terdapat kewujudan 'facts and grounds' untuk menunjukkan: (i) bahawa amalan rasuah telah dilakukan berkaitan dengan pilihan raya; (ii) bahawa ia telah dilakukan oleh calon atau dengan pengetahuan atau persetujuannya atau oleh mana-mana ejen calon (lihat perenggan 22).

(3) Pempetisyen-pempetisyen telah memplidkan butir-butir dan alasan-alasan yang mencukupi bahawa amalan rasuah atau menyalahi undang-undang telah dilakukan tetapi gagal untuk mengemukakan butir-butir yang mencukupi untuk menunjukkan bahawa tindakan itu telah dilakukan oleh calon atau dengan pengetahuan atau persetujuannya atau oleh mana-mana ejen calon. Hakikat bahawa tindakan itu telah dilakukan oleh seseorang bernama Mohamad Khalil dan kesemua penyokong-penyokongnya telah memakai jaket PAS adalah tidak mencukupi untuk menunjukkan bahawa tindakan itu telah dilakukan dengan pengetahuan, persetujuannya atau oleh ejennya. Hakikat bahawa Mohamad Khalil itu merupakan anak lelaki responden pertama tidak membawa apa-apa perbezaan memandangkan seorang individu tidak bertanggungjawab untuk tindakan seorang yang lain, meskipun mempunyai hubungan biologi (lihat perenggan 23).

(4) Petisyen-petisyen tersebut juga gagal untuk mengemukakan fakta-fakta dan alasan-alasan yang mencukupi menurut k 4(1) Kaedah-Kaedah setakat mana neksus menghendaki kebersalahan dikatakan atas responden pertama (lihat perenggan 25).

(5) Pempetisyen-pempetisyen tidak menyatakan secara spesifik bagaimana rasuah, penyuapan atau ugutan am jika ada telah menjejaskan keputusan pilihan raya dan dengan itu menjadikan isu tersebut empirik. Dalam keadaan sedemikian mahkamah dibenarkan memutuskan bahawa kejadian-kejadian yang diterangkan tidak boleh 'extensively prevailed' di kedua-dua kawasan P37 dan N19 memandangkan 86.89% dan 86.23% daripada keseluruhan pengundi yang berdaftar masing-masingnya telah datang untuk mengundi. Penemuan sama diikut berkaitan alasan berasaskan kesan-kesan kumulatif tentang semua kejadian yang membawa kepada ugutan am, dll di bawah s 32(a) (lihat perenggan 27–28).]

Notes

For a case on presentation of election petition, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) para 2049.

For cases on allegation of corrupt and illegal practices in election petition, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 1990–1991.

Cases referred to

Hardwari Lal v Kanwal Singh AIR 1972 SC 59, HC (refd)
Patau Rubis v Patrick Uren & Anor [1984] 2 CLJ 348 (Rep); [1984] 2 CLJ 51, HC (refd)
Re Lundie Brothers Ltd [1965] 2 All ER 692, HC (refd)
Tan Yar Joo @ Chan Yik Yee v Sin Yee Estate Sdn Bhd [1995] MLJU 407; [1995] 2 CLJ 657, HC (refd)
Wan Sagar bin Wan Embong v Harun bin Taib & Ors [2008] 6 MLJ 473; [2008] 5 AMR 783, FC (refd)

Legislation referred to

Election Offences Act 1954 ss 32, 34
Election Petition Rules 1954 rr 4(1)(b), 16
Representation of the People Act 1951 [IND] s 83

Firoz Hussien bin Ahmad Jamaluddin (Nik Mohd Nasir bin Nik Hussin, Mohd Hafarizam bin Harun, Muhammad Rafaei bin Adnan and Shamshawal Azraai bin Ahmad with him) (Ahmad Shahabuddin & Co) for the petitioner.
Wan Abdul Muttalib Embong (Mohd Zabidi Yusof, Abdul Haris bin Abdul Malek, Saiffuddin Othman and Kamaruzaman Abdul Wahab with him) (Wan Abd Muttalib & Co) for the first respondent.

Kang Hwee Gee J:

[1] Petisyen Pilihanraya No 04 Tahun 2008 is a petition in respect of the Parliamentary Constituency of Marang P37.

[2] Petisyen Pilihanraya No 05 Tahun 2008 is a petition in respect of the State Constituency of Ru Rendang N19.

[3] The two petitions are by the agreement and request of the parties heard together as they are based on the same sections of the Election Offences Act 1954 and are against the same winning candidate first respondent Hj Abdul Hadi bin Awang in the two elections.

[4] In the 04 of 2008 petition the first respondent Hj Abdul Hadi bin Awang from PAS, the only other candidate in the election, was declared the duly elected member of the Parliamentary Constituency of Marang P37 by polling 33,435 against the petitioner's 30,688 votes — a majority of 2,747.

[5] In the 05 of 2008 petition the first respondent Hj Abdul Hadi bin Awang from PAS, the only other candidate in the election, was declared the duly elected member of the State Constituency of Ru Rendang N19 by polling 9,379 against the petitioner's 6,693 votes — a majority of 2,686.

[6] Both the petitioners in 04 of 2008 and 05 of 2008 claimed the right to present this petition under s 34 of the Election Offences Act 1954 as a person who has the right to be returned or elected at the election under proviso (b) of the section.

[7] The petition against the second and third respondents had been withdrawn earlier.

[8] Preliminary objection by Encik Saiffuddin Othman, counsel for the first respondent:

(A) Section 32(c) of the Election Offences Act 1954 — corrupt or illegal practice was committed in connection with the election *by the candidate or with his knowledge or consent, or by any agent of the candidate*. Here petitioner has failed to state the particulars and material facts as required by reg 4(1)(b) of the Election Petition Rules 1954 — has failed to particularise the persons or the agents of the respondent whom they alleged to have committed the act complained of paras (a) to (e) as stated in pp 5 and 6 of the petition. This means the material facts are not before the court. The petition named one person Mohamad Khalil but nowhere in the petition the petitioner pleaded that Mohamad Khalil is the agent of the respondent. They had alleged Mohamad Khalil to be the son of the respondent. In the election law, biological relationship does not create agency. See the case of *Wan Sagar bin Wan Embong v Harun bin Taib* p 15 para 2:

> On the strength of the above authority it is our judgment that there has to be an element of 'appointment' wherein there is a nexus or connection between the named or identified persons alleged to be the 'agents' and the first respondent as the candidate. The appellant has to plead this to allow the first respondent to meet the case. This element of 'appointment' is present in the statement of the law as defined by Raja Azlan Shah J (His Royal Highness as he then was) in the case of *Ali Amberan* at p 18 reproduced as follows:
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> > Inspired and guided by English and Indian election law I take the view that the rule of extended scope of agency holds good in our election law; and other view would tend to make it impossible to preserve the purity and freedom of elections. Accordingly a candidate at an election is responsible for the acts of agents who are not or would not necessarily be agents under the common law of agency. Therefore a political party and its prominent members who set up the candidate and with his consent, either expressly or by necessary implication, sponsor his cause and work actively to promote his election, may aptly be regarded as 'agents' of the candidate for election purposes.

A Here I submit there is no nexus.

(B) Undue influence — Section 32(a) of the Election Offences Act 1954 — six incidents provided as particulars. 32(a) requires the element that general treating or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election — no such particulars are provided to show how all these incidents are related to the respondent and generally how they affected the result of the election.

C Particulars 1: The group of people alleged to have threatened Ahmad Anwar and daughter Nordarwina were not identified by persons merely allegation that a group of male Malays wearing PAS jacket — mere supporter or imposter cannot be controlled.

Particulars 2 involves a lady Shaidatul Niha surrounded by a group of unidentified Malay females wearing PAS jacket — forced to surrender her identity card, restrained from entering the polling station, alleging her to be a phantom voter, etc. Incident cannot be correlated to the respondent, even if it occurred is an isolated incident insufficient and falling short of Section 32(a) prevalence of general intimidation.

E Particulars 3 is merely a repetition of paragraph A already submitted above.

Particulars 4 – this incident does not concern the voter. This incident involved a group of females wearing PAS jacket harassing an election worker Mohd Fazli from ushering a female voter from casting her vote. No particulars were given. Allegation is vague. Wearing a PAS jacket does not make them an agent of the respondent. Also even if it occurred is an isolated incident incapable of coming within the requirement of Section 32(a).

G Particulars 5 — a single female voter Norazmawani. Alleged to have been stopped by an unidentified Malay person holding a PAS flag from entering the said polling station. Although she had managed to enter the polling station to cast her vote but as she was leaving the station she was surrounded by a group of 50 Malay males wearing PAS jacket who were trying to get hold of her IC. Submit: this incident is not correlated to the first respondent and also an isolated incident which would not have affected the result of the election.

Particulars 6 involves a person by the name of Abdullah Salleh who they alleged had been stopped by a group of male Malays who carrying a PAS flag trying to stop the car driven by a registered voter Abdullah Salleh harassing him and accusing him of being a phantom voter after he had cast his vote at the appropriate polling station. This incident is an isolated incident. We would not know whether these people are PAS members.

(C) Under Section 4(d) read together with Section 32(b) of the Election Offences Act 1954 and Rule 14 of the Elections

(Conduct of Elections) Regulations 1981, allegation that three registered voters Pesah, Zaharah and Zuraydi were prevented from voting by obstruction by the employee or agent of the first respondent, no particulars were given, therefore unsustainable. Section 4(d) of the Election Offences Act 1954 does not concern the first respondent at all. It concerned election officers.

(D) Cumulative breach. Submit would not apply without providing particulars in each of the complaint.

[9] With respect to petition 05 of the 2008 state seat of N19 Ru Rendang the same submission applies as the complaints are similar.

[10] Dato' Wan Abdul Muttalib Embong, counsel for the first defendant:

(1) Ru Rendang is one of the 4 state seats within the parliamentary constituency of Marang. The incident in Ru Rendang occurred — (i) in front of Markas PAS and (ii) the bus incident. Apabila dihujahkan dalam 04 of the 2008 bermakna termasuk hujahan bagi Ru Rendang 05 of the 2008.

(2) It is to be noted that the incident alleged to have occurred under paragraph C of the petition at 10.30 a.m. at Sekolah Kebangsaan Bukit Sawa polling station there were 4 incidents — (i) 3 voters were prevented from voting at 10.30 a.m.; (ii) at 11.00 a.m. another incident at same polling station occurred where it was alleged another woman was prevented by a group of Malay women from voting; (iii) at 11.40 a.m. at the same polling station where one person was alleged to have been prevented from voting attacked by 4 Malay persons; and (iv) at the same polling station at 4.00 p.m. where a Malay man was prevented from casting his vote but who managed somehow to do so. Submit: Had there been a general intimidation arising out of the miscreants of the first respondent as alleged in the 4 incidents it would have been impossible for the polling station to be in operation. There are security personnel around. The petitioner has failed to provide particulars of the occurrence of the general intimidation which can be gathered after the election.

(3) With respect to (a) particular 1 in both petitions — merely stating that occurrence was at Markas PAS is insufficient for the first respondent to prepare his defence as the place of alleged incident to have occurred.

(4) The son of the first respondent Mohamad Khalil is not stated positively as the agent of the respondent. If indeed he is the election agent of the

first respondent the petitioner provided this fact by stating this fact from the record of the Election Commission. See Section 14 of the Election Offences Act 1954.

(5) The bus incident — failure to provide particulars as to whether the persons in the bus were registered voters – mere allegation not substantiated.

(6) Except for one person who managed to vote, the rest did not say whether they managed to vote.

[11] Reply by Encik Firoz Hussein bin Ahmad Jamaluddin for the petitioner:

(A 1) Not true — we have not pleaded that Mohamad Khalil was not an agent of the first respondent. See p 5 of petition para (i). The word 'iaitu Mohamad Khalil bin Abdul Hadi melalui ejen' — we have pleaded. This satisfies the test of the Federal Court in Wan Sagar. See page 15 Tab 27 first respondent's bundle. We need only to plead the fact that he was an agent. We need not plead the evidence of his appointment as an agent. This complies with r 5 of the Election Petition Rules 1954. We can always produce evidence of agency and the appointment at the trial.

(B 1) General intimidation under Section 32 (a) of the Election Offences Act 1954 need not be caused by the candidate himself. It could have been caused by other situations on polling day such that objectively it could be said that general intimidation has so extensively prevailed. This is different from (c) which requires culpability of a candidate. (a) is disjunctive from (c). We need not therefore show that the general intimidation was initiated by the respondent. All that we have to show on the pleading is that there was general intimidation howsoever caused.

Particulars 1: We need not show that the acts of intimidation were caused by the respondent just to satisfy Section 32 (a) as disjunctive ground. It is sufficient for us to show that there was intimidation at Markas PAS. We need not show that the first respondent was culpable. We have shown intimidation by facts pleaded.

Particulars 2: Same argument. Here there is general intimidation of the people being pleaded. We have pleaded that there was a group of people who were surrounded by a group of people who had accused the registered voter Puan Shaidatul Niha of being a phantom voter who was beaten when she refused to surrender her IC. This event taken with other events pleaded would have caused a general commotion or chaos which would reasonably supposed to have affected the result of the election. We can prove general intimidation at the trial.

Particulars 3: Here the particular is used to demonstrate the general intimidation of the electorate as opposed to A above which is used to demonstrate the wrongdoing of the agent. The acts by the persons against the passengers in the bus by seizing their identity cards and alleged that they were phantom voters, throwing stones at the police resulting in the firing of tear gas — is clear pleading of general intimidation but under 32 (a) disjunctively from 32 (c). The incident caused fear among the voters in the area and it could reasonably be supposed to have affected the result of the election. We can adduce such evidence at a trial.

Particulars 4: This allegation concerned the voters not merely the election worker because the election worker was escorting a voter to the polling station at the time of the incident. The action of these females in PAS jacket demanding the identity card of the voter followed by the attack of 4 other men in PAS jacket and assault and seizure of voter's identity card constitute a pleading sufficient under Regulation 4 (1) (b) to show general intimidation under 32 (a). Although the incident involved intimidation of only one voter it has great effect on the general voters which could reasonably supposed to have affected the result of the election.

Particulars 5: The same effect applies in respect of this single female voter who had been intimidated by a group of 50 Malay males wearing PAS jacket. Imagine 50 people harassing a single Malay female voter, what effect would it have on the voters who wanted to cast their votes. Submit: It would have deterred and intimidated voters who want to cast their votes from actually coming to vote.

Particulars 6: This event perpetrated by a group of persons in the constituency through stopping the car driven by the voter Abdullah Salleh and hitting and damaging the windscreen of his car clearly shows an act of violence which would intimidate the electorate.

(C) This has been withdrawn. I am not submitting on this section C.

(D) Cumulative effect of all the events in the particulars mentioned in the petition:

(1) Essentially the Election Offences Act 1954 is to preserve the sanctity of the electoral process. The act of the persons causing the intimidation as pleaded in the six particulars (discounting the parts played by the election officials) taken cumulatively has the effect of generally intimidating the electorate in the constituency of that day and therefore affected the democratic process of a fair election.

(E) Other points raised by Dato' Wan Abdul Muttalib Embong:

(1) We have pleaded the circumstances which demonstrate that there was general intimidation and the effect was shown by the events as described in the particulars taking place from 10.30 a.m. to 4.00 p.m. The disturbances were therefore occurring throughout the day

A and could therefore be reasonably supposed to have affected the result of the election under Section 32 (a).

(2) There is no need at this stage to provide particulars of voters who had been intimidated because we submit that they were voters and the serial numbers can be provided at trial.

B

[12] Reply by Dato' Wan Abdul Muttalib Embong:

(1) Requirement of pleading specifically that Mohamad Khalil bin Abdul C Hadi being the son of the first respondent was an agent of the first respondent. This is required because by the time this petition is filed the petitioner would have known whether or not this person is the agent as defined in Wan Sagar bin Wan Embong v Harun bin Taib which requires the agent to be 'appointed'. Here in the petition the word D "agent" is stated in general term. The petitioner should be in a position to ascertain the identity of the agent i.e. Mohamad Khalil as this can be found in the record submitted under Section 14 (c) and (d) and if the agent is an agent outside Section 14 (c) and (d) he must be an appointed agent and this must be pleaded.

E

(2) Intimidation must be a general intimidation. Turnout not pleaded to show the effect of general intimidation.

[13] Reply by Encik Saiffuddin Othman:

F

(1) It must be shown that all the six incidents had affected the result of the election. See *Dato' Ismail Kamus v Pegawai Pengurus Pilihanraya (Zainal Abidin Azim) & Ors (Tab 11 of the bundle)* [2005] 2 CLJ p 237.

G Parties agree that government gazette shows turnout to be 86.2% as opposed to 95% in the 2004 election for the Marang Parliamentary Constituency.

FINDINGS AND DECISION

H *The essentials of a petition*

[14] An election petition is essentially a unilateral complaint. Unlike an action begun by writ, there is no joinder of issues. Under r 16 of the Election Petition Rules 1954 the petition is deemed to be at issue on the expiration of I the time limited for making the petition. Upon the objection being raised the court is therefore bound to examine whether on the face of it the petition discloses a complaint that merits a hearing.

[15] A petitioner is obliged to plead in the petition itself such material facts with such particulars where necessary to show on the face of the petition that he has a cause to complain under one of the five provisions of s 32 of the Election Offences Act 1954 before his petition can be examined on the merit at a full hearing.

[16] The petitioner cannot supplement his petition later by affidavit or otherwise for the court will not travel outside the petition in order to decide whether he has a cause of action. See *Tan Yar Joo v Sin Yee Estate Sdn Bhd* [1995] 2 CLJ 657 where the following passage from the judgment of Plowman J in *Re Lundie Brothers Ltd* [1965] 2 All ER 692 at p 699C was applied:

> Parenthetically, there is here a point which I think that I should mention. It was suggested in the course of argument that it was really the evidence not the allegations in the petition which was of importance in this matter. I entirely dissent from this proposition. It seems to me that it would be wrong for the court to travel outside the allegations in the petition, particularly in a case of this sort where the petition is based on the proposition that the respondents to it have been guilty of some oppression or some lack of probity.

[17] *Re Lundie Brothers* was of course concerned with a petition in corporate law — a fortiori in an election petition where the rules are even more stringent. A failure on the part of the petitioner to state in the petition itself such facts as to disclose a cause of action on his complaint is therefore liable to have his petition struck out.

[18] Now r 4(1)(b) of the Election Petition Rules 1954 requires an election to 'briefly state the facts and grounds relied on to sustain the prayer'. In *Patau Rubis v Patrick Uren & Anor* [1984] 2 CLJ 348 (Rep); [1984] 2 CLJ 51 (HC), Charles Ho J in holding that r 4(1) is mandatory equated it to s 83 of the (Indian) Representation of the People Act 1951 despite a slight difference in wordings between the two laws. Section 83 of the Act provides that 'contents of petition shall contain a concise statement of material facts on which the petitioner relies'.

[19] Charles Ho J then went on to explain what is meant by 'material fact' in an election petition by adopting what Ray J said in *Hardwari Lal v Kanwal Singh* AIR 1972 SC 59 at p 520:

> Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared could the court have given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action.

[20] He then concluded that:

> The courts in India also explained in other cases the words 'material facts' to mean what is necessary for the purpose of formulating a complete cause of action and the failure to plead which would render the pleading to be struck out under the rules of pleadings (see *Keshav Prasad v AD Mani* [1961] DEC 133 (MPHC); *HV Kamath v Election Tribunal* AIR 1958 MP 168).

[21] The principle is now well established. The Federal Court has recently confirmed it in *Wan Sagar bin Wan Embong v Harun bin Taib & Ors* [2008] 6 MLJ 473; [2008] 5 AMR 783 per Zulkefli FCJ at p 484 (MLJ); p 794 (AMR) which reads:

> On the issue of whether the facts and grounds necessary to sustain the petition have properly and adequately been pleaded by the appellant, we are of the view that the learned election judge had made correct conclusions and in line with a long list of authorities, including the decision of the Federal Court in the case of *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729 which states that under the EPR it is a mandatory requirement that a petition must not only state the facts but also the grounds to sustain the prayer and failure to do so renders the petition defective.
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> petition must not only narrate the facts complained of but must also relate or associate the complaints with the provision of election laws alleged to have been transgressed. Failure to do so would give the power to an election judge to strike out an election petition in appropriate cases. This court has also approved the decision on these similar points in a number of leading cases cited as follows:
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> (i) *Patau Rubis v Patrick Uren & Anor* [1984] 2 CLJ 348 (Rep); [1984] 2 CLJ 51 (HC);
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> (ii) *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261;
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> (iii) *Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali & Anor* [1988] 2 MLJ 384;
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> (iv) *Muip bin Tabib v Dato' James Wong* [1971] 1 MLJ 246.
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> It is our judgment that the learned election judge has not erred in law or in fact in concluding that the appellant has failed to plead sufficient facts and grounds to indicate that the corrupt practice under s 32(c) of the EOA was committed by the first respondent or with his knowledge or consent or by an agent of the first respondent. The learned election judge had correctly stated that the appellant as the petitioner would be required to state with precision such acts or instances which can be attributed to the first respondent to indicate his culpability and which he would have to verify at the hearing of the petition. We are of the view it is of vital importance that the petition must disclose a cause of action. The pleading must state a concise statement of material facts and the fullest possible particulars. The function of particulars is to present a full picture of the cause of action in order to make the opposite party understand the case he will have to meet. We have to also state here that since the pleading in

relation to s 32(c) of the EOA concerns 'corrupt practice' the requirements of pleadings are strict. In the case of *Laxmi Narayan Nayak v Ramratan Chaturvedi* (1990) 2 SCC 173 the court emphasised that the allegation of corrupt practices should not be vague. In the case of *Azhar Hussain v Rajiv Gandhi* AIR 1986 Vol 73 SC] on this same point at pp 1258–1259 the court, inter alia, held as follows:

> In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge.
>
> ...
>
> All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice.

THE COMPLAINT UNDER S 32(c)

[22] To sustain the petition on the complaint in A under s 32(c) the court is bound to examine whether on the face of that petition there is in existence such 'facts and grounds' to show:

(i) that the corrupt practice was committed in connection with the election;

(ii) that it was committed by the candidate or with his knowledge or consent or by any agent of the candidate.

[23] I can accept that the petitioner has pleaded sufficient particulars and grounds that the corrupt or illegal practice had been committed but he has failed to provide sufficient particulars to indicate that the act was committed by the candidate or with his knowledge or consent or by any agent of the candidate. The fact that the act was committed by a person called Mohamad Khalil and his supporters all wearing PAS jacket is insufficient to indicate that the act was committed with his knowledge, consent or by his agent. All that it may indicate at most was that the act may have been committed by the first respondent's supporters whose acts he may not have knowledge or control of. The fact that the said Mohamad Khalil was the son of the first respondent would not make any difference since an individual is not responsible for the act of another, their biological relationship notwithstanding. The petitioner had also failed to provide sufficient facts and grounds that this person was an agent of the first respondent apart from merely making a statement that the corrupt or illegal practice was committed by 'an agent of the candidate'. The Federal Court in *Wan Sagar* had ruled that the principle of agency in Election

Law although wider 'should not be so extended as to cast the net of agency too wide to include even ordinary party's supporters'.

[24] The petition under this ground must therefore fail.

THE COMPLAINT UNDER SECTION 32(a)

[25] Six incidents had been pleaded under the six particulars to support the petition that general bribery, general treating or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election. Having considered the submission of the parties with respect to the involvement of the first respondent in the six incidents, I accept the submission of counsel for the first respondent that the petition has also failed to provide sufficient facts and grounds pursuant to r 4(1) of the Election Rules 1954 in so far as a nexus is required to fasten culpability on the first respondent for the same reason alluded to in the complaint under s 32(c) earlier.

[26] However, having considered the ambit of s 32 of the Election Offences Act 1954 with some circumspection I would agree with the submission of counsel for the petitioner Encik Firoz Hussein that s 32(a) can be read disjunctively to provide a ground standing by itself irrespective of whether the general bribing, general treating or general intimidation envisaged therein in s 32(a) if any was caused by the first respondent or other persons with his knowledge or consent or by his agent and that therefore there is no requirement for the petitioner to plead any facts and grounds to show the nexus between the six incidents and the first respondent. The purport of the section it would appear was to declare the election of the winner void where it can be proved that general bribery, general treating or general intimidation have so extensively prevailed that they may reasonably be supposed to have affected the result of the election irrespective of the culpability of the candidate. It envisages a situation where an election is conducted in an environment in which the majority of the voters had been intimidated or had been so induced or coerced to vote with fear and violence or had been bribed by a party known or to the extent that the legitimacy of the elected candidate by a democratic process is rendered very much in doubt.

[27] Be that as it may, in the instant petition the petitioner did not state specifically how such general bribery, treating or intimidation if any had affected the results of the election and thereby leaving the issue empirical. Under the circumstances it would be permissible and indeed appropriate for me to find that the events described could not have 'extensively prevailed' at both the Marang Parliamentary Constituency P37 and Ru Rendang State Constituency N19, given that 86.89% and 86.23% of the total registered

voters respectively had turned out to vote — a fact confirmed by the Government Gazette of 8 April 2008 of which I can take judicial notice of.

[28] The same finding follows in respect of the ground based on cumulative effects of all the incidents leading to general intimidation, etc under s 32(a).

[29] The two petitions 04 of the 2008 and 05 of the 2008 are therefore for the reasons stated, plainly unsustainable. The preliminary objections of the respondent Haji Abdul Hadi bin Awang are allowed with costs.

Preliminary objections allowed with costs.

Reported by Kanesh Sundrum